



Winston H. Hickox
Secretary for
Environmental
Protection

California Regional Water Quality Control Board

Los Angeles Region

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Gray Davis
Governor

October 22, 2003

[City Manager]
[MS4 Permittee]
[Address]

REQUEST FOR TECHNICAL REPORT PURSUANT TO WATER CODE SECTION 13267 TO DEVELOP TECHNICAL INFORMATION PERTAINING TO BEST MANAGEMENT PRACTICES AND OTHER CONTROL MEASURES SUITABLE FOR IMPLEMENTING THE TRASH TOTAL MAXIMUM DAILY LOADS

Dear [MS4 Permittee]:

The Los Angeles Regional Water Quality Control Board (Regional Board) staff is in the process of developing recommendations to incorporate trash wasteload allocations into the Los Angeles municipal storm water permits. As part of this process, the Regional Board requires information pertaining to the ability of best management practices (BMPs) or other similar control measures to achieve wasteload reductions specified by the trash total maximum daily loads (TMDL) established for Los Angeles River and Ballona Creek and Wetlands watersheds (Trash TMDLs).

Pursuant to Water Code section 13267, subdivision (b)(1), I hereby request a technical report due on January 30, 2004, identifying BMPs or other similar control measures that could be implemented, enhanced, or refined to meet trash wasteload reductions specified in the Trash TMDLs during the next five years.

This letter constitutes an order issued pursuant to Water Code section 13267, subdivision (b)(1). I am issuing this order to all dischargers owning or operating a municipal separate storm sewer system (MS4) within the County of Los Angeles. However, individual dischargers ***may opt not to submit a technical report***. Those dischargers choosing to submit a technical report must comply with section 13267's requirement to submit the report under penalty of perjury. As explained in greater detail below, the Regional Board will be developing MS4 permit requirements to implement the Trash TMDLs. This order is designed to solicit information that may be used to develop permit requirements.

Basis for Order

Water Code section 13267, subdivision (b)(1) authorizes the Regional Board to require technical reports if specified conditions are met. The Regional Board may require technical reports to be submitted by any person or political entity or agency who has discharged, discharges, or is suspected of having discharged or discharging waste within the Los Angeles Region. (Wat.

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Code, § 13267, subd. (b)(1).) A technical report submitted pursuant to Water Code section 13267, subdivision (b)(1) must be submitted under penalty of perjury. (*Ibid.*)

The Regional Board has issued MS4 permits to various political entities and agencies within Los Angeles County. These MS4 permits include the City of Long Beach's MS4 Permit (NPDES No. CAS004003) and the Los Angeles County MS4 Permit (NPDES No. CAS004001). Within Los Angeles County, Caltrans is also subject to MS4 permit requirements pursuant to a permit (NPDES No. CAS000003) issued by the State Water Resources Control Board (State Board). Discharges from MS4s into waters of the State include waste, and for purposes of this order may include trash.

Regional Board staff documented the magnitude of the trash discharges from MS4s to the Los Angeles River and Ballona Creek and Wetlands watersheds in the technical documents supporting the Trash TMDLs. For example, the City of Long Beach removes between 3,000 and 9,000 tons of trash from the mouth of the Los Angeles River each year. On Coastal Cleanup Day alone, between 17 tons and 30 tons of trash are removed from three sites within and along Ballona Creek. This trash impairs beneficial uses, violates water quality standards, and required the development of a TMDL as documented in the Trash TMDLs.

The Trash TMDLs require 10-percent annual reductions in the amount of trash discharged into the Los Angeles River and Ballona Creek and Wetlands. Certain dischargers, led by the County of Los Angeles, are conducting monitoring and studies to refine the wasteload allocations contained within the Trash TMDLs and to refine the reductions in trash discharges that will be necessary to meet the annual 10-percent reductions. Presently, the Trash TMDLs establish annual reduction levels, but the implementation provisions (i.e., the annual reductions) have not been incorporated into the MS4 permits. The Regional Board staff is seeking additional information to use in preparing a recommendation for the Regional Board to incorporate the Trash TMDL provisions into the MS4 permits.

The burden of providing the additional information requested by this order bears a reasonable relationship to the need for the technical report and benefits to be obtained from the technical report. Initially, I note that dischargers may opt not to provide a report. As a result, a discharger can relieve itself of any burden under this order by not providing a technical report. Further, the actual burden of the order is minimal because dischargers can rely upon existing monitoring data and scientific literature to demonstrate the efficacy of various trash control strategies and BMPs.

Affording an opportunity for dischargers to submit relevant and appropriate technical information pursuant to this order could provide a substantial benefit to dischargers. Technical information provided in response to this order will be used to develop MS4 permit requirements. In order to establish MS4 requirements that incorporate an iterative, adaptive management approach that will address the wasteload allocations, applicable laws and regulations require adequate factual and technical information from the dischargers. Developing MS4 requirements

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incorporating BMPs will require the administrative record and fact sheet to include a discussion of the BMP selections and assumptions about the efficacy of BMPs.

The Regional Board will need adequate supporting technical information if it would like to consider relying upon an iterative, adaptive management through BMPs to address the wasteload allocation and achieve water quality standards. As a result, by potentially justifying the use of BMPs in lieu of numerical effluent limitations, the technical report could provide a substantial benefit to MS4 dischargers by providing them greater flexibility in meeting TMDL implementation provisions than if strict numerical water quality-based effluent limitations were deemed necessary and appropriate.

Purpose of Technical Report

Regional Board staff intends to use information contained in the technical report requested by this order to develop MS4 permit requirements implementing the Trash TMDLs. As set forth above, the Regional Board and State Board have already issued MS4 permits for entities within Los Angeles County. Because the Trash TMDLs did not become legally effective until after the MS4 permits were adopted, the MS4 permits do not contain requirements incorporating or implementing the Trash TMDLs. However, each of these MS4 permits includes standard reopener language that would allow the permit to be modified for cause to incorporate wasteload allocations. (See, e.g., Long Beach MS4 Permit, § II.I [Reopener and Modification]; Los Angeles County MS4 Permit, § 6.I [Reopener and Modification]; Caltrans MS4 Permit, § M.9 [Modification for Cause].)

The U.S. Environmental Protection Agency (USEPA) initially recommends MS4 permits express storm water discharge effluent limitations as BMPs or other similar requirements. (See, 61 Fed.Reg. 43761 (Aug. 26, 1996) “Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits.”) Last year, USEPA reaffirmed this approach with respect to TMDL wasteload allocations. Specifically, USEPA reaffirmed that the “policy anticipates that a suite of BMPs will be used in the initial rounds of permits and that these BMPs will be tailored in subsequent rounds.” (USEPA, “Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on those WLAs,” (Nov. 22, 2002) [hereafter, “MS4 WLA Memo”], p. 4.)

USEPA further stated that “[u]nder certain circumstances, BMPs are an appropriate form of effluent limits to control pollutants in storm water[;]” however, USEPA agrees that numerical effluent limitations may be appropriate in other circumstances. (*Id.*, p. 5.) “When a non-numeric water quality-based effluent limit is imposed, the permit’s administrative record, including the fact sheet when one is required, needs to support that the BMPs are expected to be sufficient to implement the [wasteload allocation] in the TMDL.” (*Id.*, p. 2.) The record must include “a discussion of the BMP selection and assumptions,” (*Id.*, p. 5.) “Permitting authorities may require the permittee to provide supporting information, such as how the permittee designed its

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management plan to address the WLA(s).” (*Ibid.*) Regardless of whether an effluent limitation is expressed as a numerical limit or BMPs, it must be “consistent with the assumptions and requirements of any available wasteload allocation.” (*Id.*, p. 4 [citing 40 C.F.R. § 122.44(d)(1)(vii)(B)].)

To evaluate whether appropriate circumstances exist to allow an iterative, adaptive management BMP approach to implement the Trash TMDLs as MS4 requirements, the Regional Board requires further technical information from MS4 dischargers. Specifically, the Regional Board seeks technical information to demonstrate that BMPs or other similar requirements could be implemented, enhanced, or refined to address trash wasteload reductions specified in the Trash TMDLs. At this point, the Regional Board is requesting information on BMPs or other similar requirements that could be implemented to achieve the annual, 10-percent trash wasteload reductions during the next five years.

Contents of Technical Report

A discharger submitting a technical report pursuant to this order should address one or more of the following issues.

- (1) BMPs the discharger is implementing to address the trash wasteload reductions.
- (2) New BMPs the discharger proposes to implement the requirements of the trash wasteload reductions.
- (3) Refinements or improvements to BMPs the discharger proposes to implement the requirements of the trash wasteload reductions.
- (4) Revisions to the Storm Water Quality Management Plan the discharger would propose to address the trash wasteload reductions.
- (5) Assumptions about the efficacy of BMPs or other similar requirements that could be implemented, enhanced, or refined to reduce trash discharges from the MS4. The Regional Board requests that a discharger’s technical report focus on the quantitative assumptions about how much trash that BMPs and other similar requirements would prevent from being discharged to waters of the State. Ideally, the information should demonstrate that the suite of BMPs will be sufficient to implement the trash wasteload reductions.
- (6) Methods proposed by the discharger to evaluate the effectiveness of the BMPs in meeting trash wasteload reductions.
- (7) Examples of implementation plans/strategies that the discharger contends would meet the wasteload reductions.

In responding to this order, dischargers may submit joint technical reports or cooperative technical reports. The technical reports should address BMPs or other similar requirements that could be implemented to achieve the annual, 10-percent trash wasteload reductions *during the next five years*. To be considered by Regional Board staff, the Regional Board must receive any

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technical report responsive to this order no later than 5:00 p.m. on January 30, 2004. Pursuant to Water Code section 13267, subdivision (b)(1), a technical report submitted pursuant to this order must be submitted under penalty of perjury.

If you have any questions, please do not hesitate to contact Jon Bishop at (213) 576-6622 or Xavier Swamikannu (213) 620-2094.

Sincerely,



Dennis A. Dickerson
Executive Officer

cc: Michael Lauffer, Staff Counsel, SWRCB
Jon Bishop, LARWQCB
Xavier Swamikannu, LARWQCB

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